

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE  
MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	CRIMINAL ACTION NO.
v.	)	2:17cr224-MHT
	)	(WO)
MICHAEL E. PETEN, JR.	)	

OPINION AND ORDER

This cause is before the court on defendant Michael E. Peten, Jr.'s motion to continue. For the reasons set forth below, the court finds that jury selection and trial, now set for March 12, 2018, should be continued.

While the granting of a continuance is left to the sound discretion of the trial judge, see *United States v. Stitzer*, 785 F.2d 1506, 1516 (11th Cir. 1986), the court is limited by the requirements of the Speedy Trial Act, 18 U.S.C. § 3161. The Act provides in part:

"In any case in which a plea of not guilty is entered, the trial of a defendant charged in an information or indictment with the commission of an offense shall commence within seventy days from the filing date (and making public) of the information or indictment, or from the date the

defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs."

§ 3161(c)(1). The Act excludes from the 70-day period any continuance based on "findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial." § 3161(h)(7)(A). In granting such a continuance, the court may consider, among other factors, whether the failure to grant the continuance "would deny counsel for the defendant ... reasonable time necessary for effective preparation, taking into account the exercise of due diligence," § 3161(h)(7)(B)(iv), or "result in a miscarriage of justice," § 3161(h)(7)(B)(i).

The court concludes that, in this case, the ends of justice served by granting a continuance outweigh the interest of the public and Peten in a speedy trial. Peten has filed a motion to suppress that is pending before the court, and, according to him, the outcome of that motion

will be dispositive of the charges alleged in the indictment. While the suppression motion will be ready for disposition (with the submission of the magistrate judge's recommendation on the motion) on February 28, 2018, a week and a half before trial, Peten still seeks a continuance, apparently so as to allow time for the non-trial disposition of this case. Furthermore, the government has joined in Peten's motion to continue, as one of its key witnesses will be unavailable for trial on March 12, 2018. In light of these circumstances, the court concludes that a continuance is warranted.

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Accordingly, it is ORDERED as follows:

(1) Defendant Michael E. Peten, Jr.'s motion for continuance (doc. no. 38) is granted.

(2) The jury selection and trial, now set for March 12, 2018, are reset for April 16, 2018, at 10:00 a.m., in Courtroom 2FMJ of the Frank M. Johnson Jr. United

States Courthouse Complex, One Church Street, Montgomery,  
Alabama.

DONE, this the 27th day of February, 2018.

/s/ Myron H. Thompson  
UNITED STATES DISTRICT JUDGE